

REMARKS/ARGUMENTS

The present Amendment is submitted in an earnest effort to advance the case to issue without delay.

Independent claims 1 and 32 have been amended to specify the maximum contact time is about 2 minutes. Support is found in original claim 7. Furthermore, the number of treatments have been stated to be at least about 6. Support is found at page 23 (line 29). Claim 1 has been further amended to specify that the treatments are "with an identically formulated mixture". Support is found in the Examples at page 30 (lines 20-24).

Objection was raised with respect to claim 2 because the words in the lines are crowded too closely together or improperly spaced. Claim 2 has been amended to provide proper spacing.

Further, objection was raised to claim 2 because two substances which included "phenetole" was said to be mis-spellings of the word "phenol". Applicants note that "phenetole" is a correct spelling and means an ethoxy benzene.

Claims 5 and 6 were objected to for reciting a broad range of components followed by a series of narrow ranges. These claims have now been canceled.

Objection was raised to claim 35 because the second "part ai" should have read "part aii". Applicants have corrected this claim.

Claims 39 and 40 were rejected under 35 USC §112, second paragraph. These claims have now been canceled. Accordingly, the rejection is believed to be moot.

Claims 1-9 and 13-40 were provisionally rejected for obviousness-type double patenting over claims 1-34 of co-pending application No. 10/034,174, claims 1-23 of co-pending application No. 10/096,812, claims 1-26, of co-pending application No. 10/095,657 and claims 1-2 and 4-28 of co-pending application No. 10/196,130.

Applicants herewith submit a Terminal Disclaimer which is believed to overcome the double patenting rejection.

Claims 1-34 and 36-37 were rejected under 35 USC §103(a) as being unpatentable over Casperson et al. (U.S. Patent No. 5,376,146) in view of Lapidus et al. (U.S. Patent No. 4,104,021). Applicants traverse this rejection.

The present invention is directed at the gradual permanent dyeing of hair in a manner to minimize hair damage. The same formula is utilized in at least 6 treatment cycles. Each cycle includes a rinsing of the mixture from the hair and is spaced about 8 hours to 30 days apart from a previous or later treatment. Furthermore, contact on the hair is limited to no longer than "about 2 minutes".

Applicants' gradual method achieves essentially the same color performance after six cycles of two minute treatments than the traditional single cycle with substantially longer contact times. Treatment of the hair according to the present invention imparts a lower wet combing force, higher break stress, low amounts of cysteic acid (indicating less hair damage), good hair color change, less color fading, and more intense color.

Casperson et al. was introduced as teaching a method for dyeing hair. The Examiner recognized that this reference fails to disclose several important features of the claims. These include absence of disclosure with respect to the time interval of 8 hours to 30 days between treatments and the contact period between 1 minute and 2 minutes.

Lapidus was introduced as teaching a process for dyeing hair comprising applying a mixture of a colorant oxidative solution in successive applications for a time period of "up to 5 minutes" and use repeated once every 2 to 8 weeks.

A close reading of Lapidus will reveal that the shortest disclosed contact time is 5 minutes. See column 3, (lines 8, 52 and 67) and column 4 (lines 54 and 59). By contrast, applicants claim a much shorter contact time of about 2 minutes maximum. This brief contact, preferably through an ordinary shampoo treatment insures minimization of damage.

Lapidus discloses that the number of treatments may range from 1 to 4. See column 3 (line 47) and column 6 (lines 32 and 33). Top-up is suggested to occur once every 2 to 8 weeks. See column 4 (line 62). By contrast, applicants claimed invention requires at least 6 applications. This number of treatments is necessary to achieve a final fully formed color. Utilization of less than 6 treatment cycles is insufficient considering the short contact times. Lapidus repeats his final (third) treatment once every 2 to 8 weeks. His final or third treatment is not intended to further gradually color the hair but rather is stated "to color new growth of hair in the target shade" (emphasis added). The 2-8 week top-up intervals are not part of a gradually dyeing of the hair. Once these top-up events occur, the hair has already reached its target shade. It is evident the reference does not teach at least 6 treatments in the gradual coloration process.

Lapidus does not use an identical colorant mixture for successive treatments. He gradually increases the amount of oxidant solution in a series of treatments. See column 3, (lines 40-47). The reference method is illustrated under Example 1. Therein the first treatment utilizes 2.5 cc oxidant solution. This is followed in the next cycle by an 5 cc oxidant solution. Finally a 10 cc oxidant solution is applied. See column 4 (lines 45-59). By contrast, applicants in each treatment cycle apply the same formula colorant mixture. There is no step-up increase of oxidant from one treatment cycle to another.

A combination of Casperson et al. in view of Lapidus et al. would not render this invention obvious. Casperson does not teach the slow gradual treatment of hair through a number of cycles which impart ever increasing color intensity to the hair. While Lapidus is concerned with gradual coloration, the method is quite distinct from the presently claimed invention. Lapidus employs a contact cycle of at least 5 minutes minimum, while the present claims are no longer than about 2 minutes. The number of treatment cycles in Lapidus is not revealed to be beyond 4. This contrasts with the at least 6 treatment cycles of the present invention. Lapidus teaches that each treatment cycle must increase the level of oxidant. By contrast, applicants operate with the same formula colorant mixture within each of the treatment cycles. The Examiner has not set forth a prima facie case. The references lack the method steps of 2 minute maximum contact time, at least 6 treatment cycles and utilizing a mixture of the same formula (and concentrations) for consecutive treatment cycles. Accordingly, the combination of Casperson et al. in view of Lapidus et al. would not render the instant invention obvious.

Claim 35 was rejected under 35 USC §103(a) as unpatentable over Casperson et al. (U.S. Patent No. 5,376,146) in view of Lapidus et al. (U.S. Patent No. 4,104,021) and further in view of Boulton et al. (GB 1 289 712). Applicants traverse this rejection.

The Examiner's citation of Boulton identified as EP 1 289 712 should actually be GB 1 289 712, a patent belonging to Dart Industries. The Examiner is requested to correct U.S. PTO Form 892 under reference "N" to reflect the proper country.

Boulton does not remedy the basic deficiencies of the primary and secondary references. Boulton does not disclose a method for gradually coloring hair over a series of progressive treatments, especially through the use of a consumer's regular shampoo and/or conditioner ritual. The reference does not disclose contacting the hair with a colorant mixture for no more than about 2 minutes in each application cycle. Neither does this

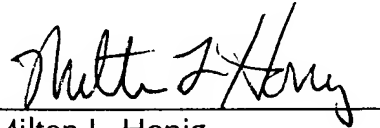
reference disclose applying the colorant composition over six or more treatments to achieve an ever increasing color change while minimizing damage to the hair.

Claims 38-40 were rejected under 35 USC §103(a) as unpatentable over Duffer et al. (U.S. Patent Application 2003/0028979 A1). Applicants traverse this rejection.

Claim 38-40 have been canceled. This rejection appears to be moot.

In view of the forgoing Amendment, Terminal Disclaimer and comments, applicants believe that the claims are now in condition for allowance and such action is herewith requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Milton L. Honig", written over a horizontal line.

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